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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/432,523	11/03/1999	JOEL DONALD GRAY	100344-005-	1168
75	590 12/18/2002			
FOLEY & LARDNER			EXAMINER	
ONE IBM PLAZA 330 NORTH WABASH			ISABELLA, DAVID J	
SUITE 3300	60611		ART UNIT	PAPER NUMBER
CHICAGO, IL	CHICAGO, IL 60611		3738	
			DATE MAILED: 12/18/2002	

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.			Application No.	Applicant(s)			
Examiner DAVID I ISABELLA 3738 The MAILING DATE of this communication appears on the cover she with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Educations of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filled 1 the period to reply is equalited above. In the maximum distinctory period will apply and will expert 51X (50 MONTHS from the mailing date of this communication of the provisions of the cover of			Application No.	Applicant(s)			
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	2) Notic	e of Draftsperson's Patent Drawing Review (PTO-948)	5) Notice of Informal I				

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Claim R j cti ns - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 37, recitation of "vice versa" is improper.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 37-39,41 and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Ginn, et al. or Bacich et al.

Each of Ginn, et al and Bacich, et al discloses a surgical clamp comprising an elongate, one piece, malleable hollow shaft including a distal end and proximal end.

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The clamp further comprises a clamp assembly with first and second opposably movable jaws, a handle assembly and an elongate actuator disposed within the hollow shaft as claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35⁻U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 37-39, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGuire in view of either of Bacich, et al or Ginn, et al. McGuire discloses a surgical knife having a malleable shank. Bacich, et al and Ginn, et al teaches the equivalence between surgical tools such as knives, clamps, forceps, etc all used in combination with malleable shafts. To modify the instrument of McGuire to a clamp or forcep would have been obvious from the teachings of Bacich, et al or Ginn, et al as being substantially equivalent elements.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 37-39,41 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Lucey, et al.

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Claim 37 utilizes a open ended transitional phrase "comprising" which does not preclude more than one element in the overall device. The segment 40 of Lucey, et al as a substructure of the total device clearly anticipates the claim as broadly worded.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3580 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DAVID J SABELLA Primary Examiner Art Unit 3738

dji

December 14, 2002